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SUPREME COURT, U.S.

No. 07-152

In The

Supreme Court of the United States

JAMES T. WALKER,

Petitioner,

v.

CENTRE INSURANCE COMPANY and
ZC STERLING INSURANCE AGENCY, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether the Petitioner has presented compelling reasons to grant the Petition, where the Petitioner never raised, and the Maryland Court of Appeals never considered, any issues of Federal law in its decision, including any claim that the Maryland Insurance Administration violated the Petitioner's procedural due process rights under the Fourteenth Amendment.

II. Whether the Petitioner has presented compelling reasons to grant the Petition where the Maryland Court of Appeals' decision involved the interpretation of state law based upon adequate and independent state law grounds and no federal question was ever reached by the Maryland Court of Appeals.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent No. 1, Z.C. Sterling Agency, Inc. is a California corporation and is private. Z.C. Sterling Corporation is a Delaware corporation and is the parent company of Z.C. Sterling Agency, Inc. Z.C. Sterling Corporation is a private corporation.

Respondent No. 2, Centre Insurance Company, has all of its issued and outstanding shares of voting common stock owned by Centre Solutions Holdings (Delaware), Ltd., a holding company domiciled in Delaware, which in turn is controlled by Centre Solutions (U.S.) Limited, an insurance and reinsurance company domiciled in Bermuda. Centre Solutions (U.S.), Limited, is controlled by Centre Groups Holdings (U.S.) Limited, a holding company domiciled in Delaware, which is in turn controlled by Centre Reinsurance Limited, an insurance and reinsurance company domiciled in Bermuda, which in turn is controlled by Centre Solutions (Bermuda) Limited, an insurance company domiciled in Bermuda, which is in turn controlled by Centre Group Holdings, Limited, a holding company domiciled in Bermuda, which in turn is controlled by Global Assets Holdings Limited, a holding company domiciled in Bermuda, which is ultimately owned by Zurich Financial Services AG, a financial services company domiciled in Switzerland. Each of the preceding entities is privately held. Zurich Insurance Company is domiciled in Switzerland and is publicly traded in Europe.

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INTRODUCTION

The Petitioner in this case has presented no compelling reasons for his Petition for a Writ of Certiorari to be granted in accordance with Supreme Court Rule 10. This case involves the Court of Appeals of Maryland's interpretation of a state statute as to when service is effective upon an individual following an administrative hearing before the Maryland Insurance Administration. The Petitioner never raised, nor did the Court of Appeals ever consider, any issues pertaining to the Petitioner's due process rights based upon either state or federal law. Specifically, the Petitioner did not raise a federal question until he referenced the Fourteenth Amendment in his Petition for Writ of Certiorari. As is clear from the decisions of both the Maryland Court of Special Appeals and the Maryland Court of Appeals, only state law questions were considered below. There has never been a federal aspect to this case, and the Petitioner's seeming allegation that his federal due process claim did not arise until the Maryland Court of Appeals found in the Respondents' favor is ludicrous. Therefore, the Petition should be denied.

STATEMENT OF THE CASE

This case has its genesis in two administrative complaints filed by the Petitioner with the Maryland Insurance Administration (hereinafter "MIA"), in October 2002 (hereinafter "No. 52") and on September 14, 2004 (hereinafter "No. 56").[1] In each, Petitioner charged that Respondents had violated the Insurance Article of the Maryland Code in how they handled various claims made under his homeowner's insurance policy after his home was damaged by a tornado. Pursuant to its statutory grant of authority, the MIA made initial determinations in each case. In both cases, the MIA found in favor of the Respondents, finding no violation of the Insurance Article. Following the MIA's issuance of each of its decisions, the Petitioner requested an administrative hearing, and the matters were referred to the Office of Administrative Hearings (hereinafter "OAH").

In an Order dated October 14, 2004, the OAH found that the Respondents had not violated the provisions of the Insurance Article in No. 52. Petitioner thereafter filed a Petition for Judicial Review in the Circuit Court for Charles County, Maryland on November 19, 2004. The Respondents filed a Motion to Dismiss based upon lack of jurisdiction. The Circuit Court for Charles County granted the Respondents' Motion to Dismiss on April 14, 2005 for want of jurisdiction, concluding that the petition was filed more than thirty days after it had been served on the Petitioner. The Petitioner timely appealed to the Maryland Court of Special Appeals, which reversed the decision of the Circuit Court on April 28, 2006. The Respondents and the Maryland Insurance Commissioner then filed a timely petition for writ of certiorari to the Maryland Court of Appeals.

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[1] "No.52" and "No.56" refer to the Case Numbers given to the two cases at the Court of Appeals level. For clarity, they have been so designated throughout this Brief in Opposition.

In an Order dated October 18, 2005, the OAH found that the Respondents had not violated the provisions of the Insurance Article in No. 56. Petitioner then filed a Petition for Judicial Review in the Circuit Court for Charles County, Maryland on November 18, 2005, more than thirty days after the OAH's Order was issued. On March 30, 2006, acting upon the Respondents' Motion to Dismiss, the Circuit Court dismissed the Petition for Judicial Review related to No. 56 for lack of jurisdiction because the Petition had been filed more than thirty days after it had been served upon the Petitioner. The Petitioner appealed this decision to the Maryland Court of Special Appeals. Prior to the intermediate appellate court hearing the matter, Centre Insurance Company, Respondent, filed a petition for writ of certiorari in this matter, and the two cases were consolidated by the Maryland Court of Appeals.

In a decision dated January 9, 2007, the Maryland Court of Appeals held that, pursuant to the Insurance Article of the Maryland Code, the 30-day filing period for a petition for judicial review of an administrative decision begins on the date the order is mailed to a party, versus when it is actually received. The Petitioner filed a timely motion for reconsideration on February 9, 2007, which was denied on March 9, 2007. A Petition for Writ of Certiorari to this Court was filed on June 7, 2007.

REASONS FOR DENYING THE PETITION

The decision of the Maryland Court of Appeals below does not implicate a federal question. It was premised solely upon state law grounds. Accordingly, Petitioner has not carried his burden of demonstrating a "compelling reason" for his Petition to be granted. See Sup. Ct. R. 10.

I. The Supreme Court of the United States Does Not Have Jurisdiction to Grant this Petition.

A. The Supreme Court Cannot Entertain Petitions Arising Solely Out of State Law.

The Supreme Court's jurisdiction to review State court decisions is specifically limited by statute as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

28 USC § 1257(a).

The Supreme Court has made clear that it will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision upon review. Adams v. Robertson, 520 U.S. 83, 86 (1997). "It is well settled that this Court will not review a final judgment of a state court unless 'the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.'" Board of Directors of Rotary Club Int'l v. Rotary Club of Duarte, 481 U.S. 537, 550 (1987) (quoting Webb v. Webb, 451 U.S. 493, 496-497 (1981)). When "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper

presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." Board of Directors of Rotary Club Int'l, 451 U.S. at 550 (internal citations omitted).

In the instant case, the issue is whether the Maryland Court of Appeals correctly interpreted Maryland Code Annotated, Insurance Article 2-204, when it determined that service of a decision of the Office of Administrative Hearings is effective upon mailing. Centre Ins. Co. v. J.T.W., 397 Md. 71, 72, 916 A.2d 235, 235 (2007).The Petitioner did not attack the validity of the statute on substantive due process grounds below, nor did he allege that his procedural due process rights were violated when the Circuit Court for Charles County denied his two Petitions for Judicial Review on different occasions after concluding that Petitioner had not filed his Petitions for Judicial Review within the requisite thirty-day period following mailing of the decision.

B. Assuming, arguendo, that Petitioner's Constitutional Challenge was Raised Timely, the Petitioner Fails to Specifically Demonstrate How He Was Denied Procedural Due Process.

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV. State action includes all actions created, enforced or regulated by the State. Barry Properties v. Fick Bros., 277 Md. 15, 22-23, 353 A.2d 222, 227 (1976). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

Here, the Petitioner brought claims against the insurance company that had sold him his homeowner's insurance policy for alleged violations of the Insurance Article of the Maryland Code. Although he did not raise a procedural due process argument below, he appears to be arguing in his Petition that he was denied the opportunity to be heard pursuant to the Maryland Administrative Procedures Act, Md. Code Ann., State Gvmt. § 10-201 et seq., or pursuant to the MIA's own regulations codified in the Code of Maryland Regulations ("COMAR"), COMAR 32.01.01.00 et seq. Pet. 8-9. Alternatively, the Petitioner appears to be arguing that the Maryland Court of Appeals' decision as to the interpretation of a state statute violated his due process rights under the Fourteenth Amendment. Pet. 7-8. Each of these arguments is explored in turn below.

1. Even assuming, *arguendo*, that the Maryland Insurance Administration's Notification of Appeal Rights Constitutes a State Action, Petitioner has Failed to Show How He Was Denied Procedural Due Process As He Was Afforded Notice and an Opportunity to Be Heard at the Agency Level.

The Maryland Insurance Administration investigates complaints made by consumers against insurers as to violations of the Insurance Article of the Maryland Code. COMAR 32.02.01.02B (2007). Petitioner made several such complaints against the Respondents. Pursuant to COMAR, the MIA investigated the matter and determined that the Respondents had not violated any provisions of the Insurance Article. Thereafter, the MIA notified the parties of its decisions pursuant to COMAR 31.02.01.05 (2007). Service was effected by mailing the decision to Petitioner's address of record pursuant to COMAR 31.02.01.05B, which provides various modes of notifying parties of the MIA's decision.

including, but not limited to, certified mail, first-class, postage-prepaid mail, personal delivery and service on counsel. COMAR 31.02.01.09 (2007).

The Petitioner timely requested a hearing from both of the MIA's decisions, and hearings were held as a result before the Office of Administrative Hearings. Such administrative hearings are governed by the "contested case" provisions of the Maryland Administrative Procedure Act, Md. Code. Ann., State Govt. §§ 10-201-10-227, and are subject to procedural due process requirements. See COMAR 31.02.01.02C (2007) (treating administrative complaints as contested cases); see also Mehrling v. Nationwide Ins. Co., 371 Md. 40, 44, 806 A.2d 662, 665 (2002) (noting applicability of APA to MIA administrative hearings). All parties were present at the hearing. The Office of Administrative Hearings issued its decisions on behalf of the Maryland Insurance Administration with notice that the Petitioner had thirty days in which to appeal the decision to the Circuit Court in the county where he resided.

The Petitioner fails to allege that the method by which the Maryland Insurance Administration served him with its decision constituted a violation of his due process rights. There is nothing contained in the Petition indicating that the simple mailing of the notice via first class mail did not provide him with adequate notice of the proceedings. The Petitioner instead argues that the thirty-day timeframe for filing an appeal should run from when he receives notice of the decision. As discussed, *infra*, the Court of Appeals entered into a lengthy discourse on statutory interpretation and concluded that Petitioner's rationale was incorrect, and largely impractical, since the MIA would have no way of knowing when the decision was delivered unless it were sent by certified mail, which was not contemplated under the statute.

2. Petitioner Fails to Allege a Cognizable Due Process Claim as to the Circuit Court's Action in Denying His Petition, Since He Was Given Notice and an Opportunity to be Heard.

If the Petitioner was afforded notice and the opportunity to be heard at the administrative agency level, the only remaining possible source for a violation of the Petitioner's procedural due process rights must be an allegation that the Petitioner's due process rights were violated at the Circuit Court level. Due process does not require adherence to any particular procedure and calls for only such procedural protections as the situation demands. Department of Transportation v. Armacost, 299 Md. 392, 416, 474 A.2d 191, 203 (1984). For a hearing to be fair, the parties must be afforded adequate notice and an opportunity to be heard. Vavasori v. Commission on Human Relations, 65 Md. App. 237, 245, 500 A.2d. 307, 311, cert. denied 305 Md. 419, 504 A.2d 1152 (1985). Specifically, the Circuit Court for Charles County denied two Petitions for Judicial Review filed by the Petitioner because he failed to comply with Md. Code Ann., Ins. Sect. 2-204, which required him to file his Petition for Judicial Review in the Circuit Court within thirty days of the decision being mailed by the Maryland Insurance Administration.

The Respondents filed a Motion to Dismiss No. 52 with the Circuit Court for Charles County on January 3, 2005. The Petitioner filed a timely "Request to Deny Respondent's Motion to Dismiss Appeal" on January 7, 2005. The Circuit Court set the matter for a hearing on April 14, 2005. Both parties appeared at the hearing and argued their respective positions. The Circuit Court Judge granted the Motion to Dismiss in No. 52 at the April 14, 2005 hearing.

The Respondents filed a Motion to Dismiss No. 56 on December 8, 2005. The Petitioner filed a timely "Motion to Deny Respondent's Motion to Dismiss" on December 20, 2005. On March 31, 2006, the Circuit Court dismissed No. 56 without a hearing because the Petitioner had failed to file his Petitions within the requisite thirty-day period. In fact, the Petitioner filed his second late Petition for Judicial Review nearly one year after the Circuit Court had denied his first Petition for untimeliness.

Here the Petitioner was afforded notice and an opportunity to be heard with respect to the Motion to Dismiss filed in No. 52. He cannot, therefore, argue that he was denied procedural due process simply because he was displeased with the outcome of the proceeding. With respect to the Motion to Dismiss in No. 56, Maryland law does not require a hearing as of right on Motions to Dismiss. See Md. R. 2-322. However, any party may request a hearing on a motion pursuant to Maryland Rule 2-311(f). See Md. R. 2-311(f) (2007). If such a hearing is requested in writing, a court may not rule upon a dispositive motion without first holding a hearing. However, there is no indication in this case that the Petitioner filed a written Request for Hearing. As such, he had notice and an opportunity to be heard but chose not to avail himself of that option. He cannot now allege that he was denied due process as a result of this choice.

II. The Maryland Court of Appeals is the Ultimate Authority as to Maryland State Law and any State Law Grounds Must First Be Decided by that Court.

A. The Maryland Court of Appeals is the Ultimate Authority as to the Interpretation of Maryland State Law.

The Supreme Court is "bound to accept the interpretation of [state] law by the highest court of that State." Hortonville Joint School District No. 1 v. Hortonville Education Ass'n, 426 U.S. 482, 488 (1976). In this case, the Maryland Court of Appeals was asked to interpret Maryland Code Annotated, Insurance Section 2-204(c). In doing so, the Maryland Court of Appeals concluded that the thirty-day period for filing a petition for judicial review commenced when the administrative agency's decision was mailed to the Petitioner, not when the Petitioner received it, as he had argued below. The Maryland Court of Appeals used Maryland case law in interpreting the meaning of the statute.

Specifically, the Court of Appeals below entered into a lengthy analysis of Section 2-204(c) compared to the various other service of process statutes contained elsewhere in Maryland law in order to "avoid a construction of the statute that is unreasonable, illogical, or inconsistent with common sense." Centre Ins. Co. v. J.T.W., 397 Md. at 81, 916 A.2d at 240 (quoting Blake v. State, 395 Md. 213, 224, 909 A.2d 1020, 1026 (2006) (internal citations omitted). Noting that Maryland law specifies personal service, certified mail, or some similar means of service when actual receipt is necessitated, and, in the absence of similar language in the Insurance Article, the Court held that the appeal period commenced upon mailing of the MIA's decision, not upon receipt thereof. Id. at 88, 916 A.2d at 245.

Where the legal issue is one of statutory interpretation, "[t]he cardinal rule . . . is to ascertain and effectuate the intent of the Legislature. Kushnell v. Dep't of Natural Resources, 385 Md. 563, 576, 870 A.2d 186, 193 (2005). The first step in ascertaining the intent of the Legislature is the careful examination of the plain language of the statute. Id. In so doing, "[a] court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it

construe the statute with forced or subtle interpretations that limit or extend its application." Id. at 576-77, 870 A.2d at 193 (quoting Price v. State, 378 Md. 378, 387, 835 A.2d 1221, 1226 (2003)). Similarly, a court may neither interpret nor construe a statute in such a way that would yield absurd or illogical results, but instead must "attempt to construe statutes in a common sense manner." Kilmon v. State, 394 Md. 168, 177, 905 A.2d 306, 311 (2006).

Furthermore, of particular import to this case is the principle that the Legislature intends enactments of a complete statutory scheme to be read in harmony. See Smack v. Dep't of Health and Mental Hygiene, 378 Md. 298, 306, 835 A.2d 1175, 1179 (2003) (finding that "where the statute to be construed is a part of an entire statutory scheme, construction of the provisions of the scheme must be done in the context of that scheme"). Therefore "[t]he plain language of a provision is not interpreted in isolation. Rather, we analyze the statutory scheme as a whole and attempt to harmonize provisions dealing with the same subject so that each may be given effect." Kushnell, 385 Md. at 577, 870 A.2d at 193. In the event that two statutes conflict, "the statutes may be harmonized by viewing the more specific statute as an exception to the more general one." Smack, 378 Md. at 306, 835 A.2d at 1179 (quoting Government Employees Ins. Co. v. Ins. Comm'r, 332 Md. 124, 133, 630 A.2d 713, 718 (1993)). Lastly, where the language of the statute is both clear and unambiguous when given its ordinary meaning, there is no justification for further inquiry into the intent of the Legislature because the "[l]egislature is presumed to have meant what it said and said what it meant.'" Kushell, 385 Md. at 577; Arundel Corp. v. Marie, 383 Md. 489, 502, 860 A.2d 886, 894 (2004) (quoting Witte v. Azarian, 369 Md. 518, 525, 801 A.2d 160, 165 (2002)).

Although the Petitioner addresses various subsections of these statutes individually, Respondents submit that, in

accordance with traditional notions of statutory construction, these statutes and rules should be set forth in their entirety and read in harmony with one another.

Maryland Rule 7-203 provides the time requirements for filing a Petition for Judicial Review of any administrative agency decision and provides in pertinent part:

> (a) Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:
>
> (1) the date of the order or action of which review is sought:
>
> (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
>
> (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

Md. R. 7-203(a) (2007).

Section 2-215 of the Insurance Article of the Maryland Code outlines the procedures for obtaining judicial review of decisions from the Maryland Insurance Administration. This statute provides, in relevant part, that:

> (d) To take an appeal, a person shall file a petition for judicial review with the appropriate circuit court within 30 days after:
>
> (1) The order resulting from the hearing was served on the persons entitled to receive it.

Md. Code Ann., Ins. § 2-215 (2007).

The final statute at issue in this proceeding is § 2-204 of the Insurance Article, governing orders and notices of the Maryland Insurance Commissioner. It provides, in relevant part, that:

> (c) An order or notice may be served on a person by:
>
> (1) Mailing it to the person at the last known principal place of business of the person, as listed in the records of the Commissioner; or
>
> (2) Otherwise delivering it to the person.

Md. Code Ann., Ins. § 2-204 (2007).

Appellant contends that subsection (a)(3) of Maryland Rule 7-203 is dispositive in this case because it provides that he has 30 days from the date he receives the administrative order to file his Petition for Judicial Review. However, the Maryland Court of Appeals held that Rule 7-203 was inapplicable because Rule 7-203 only applies if no other rule or statute governs the matter. Centre Ins. Co., 397 Md. at 83, 916 A.2d at 242. Here, the Court of Appeals held that the Insurance Article clearly and specifically applied to the matter at hand, and, as a result, Rule 7-203 did not apply. Id.

The plain language of Section 2-204 does not require certified mail, but rather permits service by regular mail. The Administrative Law Judge mailed the administrative order of the MIA to the Petitioner's address of record, which was repeatedly used throughout the administrative review process, and, indeed, Petitioner has never denied receiving the order. The Maryland Court of Appeals has previously held that the term "service" does not automatically require or imply receipt. For example, in Renehan v. Public Serv. Comm'n of Maryland, 231 Md. 59, 188 A.2d 566 (1963), the Maryland Court of Appeals affirmed the decision of the

Circuit Court for Carroll County in dismissing a petition for judicial review as untimely. Recognizing that the issue was controlled by then Rule 1101(d)(2), the Maryland Court of Appeals noted that "[t]here is no provision of law which requires that notice of the action of the Public Service Commission be received by a party in order to make it effective." 231 Md. at 63, 188 A.2d at 567. Instead, the only requirement was that the Commission mail the order to the affected parties. See id. at 62-63, 188 A.2d at 567. Thus, the Maryland Court of Appeals held that "[s]ervice by the Commission of notice of its action . . . was made by the mailing of the copy of the order . . . ." Id. at 63, 188 A.2d at 567.

Similarly, in Lee v. State, 332 Md. 654, 632 A.2d 1183 (1993), the Maryland Court of Appeals addressed whether the term "service" implicitly required receipt, and again held that it did not. Lee v. State, 332 Md. 654, 671, 632 A.2d 1183 (1993). In Lee, the State's Attorney's Office mailed Notice of Intent to Seek Enhanced Penalties to the defendant. At that time, Maryland Rule 4-245(b) required that the State's Attorney "serve notice of the alleged prior conviction on the defendant or counsel . . . at least 15 days before trial in circuit court." Id. at 658, 632 A.2d 1183. The defendant averred that he never received such notice, and therefore was not properly served with the State's notice that it would seek enhanced penalties. See id. at 657, 632 A.2d 1183. The Maryland Court of Appeals rejected the defendant's argument, noting that pursuant to Rule 1-321(a) which pertains to the service of court pleadings, "[s]ervice by mail is complete upon mailing." Id. at 658, 632 A.2d 1183. More importantly, the Maryland Court of Appeals rejected the defendant's underlying argument that the term "service" required actual receipt, stating:

> If the drafters of the rules had wanted to guarantee that the defendant actually received a copy of the

> notice 15 days before trial, they would not have used the words "serves notice" in Rule 4-245. Rather the rule would have required personal service, certified mail, or some other means of both assuring actual receipt by the defendant and defining a point from which to measure time.

Id. at 665, 632 A.2d 1183.

The facts in each of these cases are analogous to the present Petition and, therefore, Respondents submit that this case warrants similar analysis. In each case, the Court examined the plain language of the statute in question and found no explicit requirement of receipt. Similarly, Section 2-204 as further explained by Section 2-215, does not require receipt. In addition, the Court in each case refused to read into the statutes an "implicit requirement" of receipt, recognizing that the Legislature could have included such requirements explicitly, if it so intended.

B. The Petitioner Now Alleges that the Court of Appeals Applied the Incorrect Statute in Deciding this Case When He Specifically Cited this Statute in His Questions Presented to the Court of Appeals Below.

At this point, the Petitioner argues that the Court should consider no less than three separate Maryland Regulations and two Maryland statutes as his basis that the Maryland Court of Appeals' decision was incorrect. However, the Petitioner did not raise arguments pertaining to any of these statutes or regulations before the Court of Appeals below. Specifically, the question that the parties presented before the Court of Appeals of Maryland was as follows: "When, under Title 2 of Maryland's Insurance Article, does the 30-day filing period for a petition for judicial review of an administrative decision begin?" In his

Petition, however, Petitioner argues that "[t]he decision of the lower court to use § 2-204(c) as the 'operative' statute is misplaced." Pet. 12. Such an argument is disingenuous at best, since the Petitioner's Petition for Certiorari to the Maryland Court of Appeals presented the question for review as follows: "Was the Circuit Court correct when it held that the thirty-day period in which a Petition for Judicial Review of a decision of the MIA may be timely filed begins upon mailing of the order, given the fact that all that is required by the operative statute, § 2-204(c) of the Insurance Article, is the mailing of the decision by regular first-class mail?" Centre Ins. Co., 397 Md. at 72, n.1, 916 A.2d at 727, n.1 (2007) (emphasis added).

Furthermore, the Petitioner's only case law basis for his argument that the thirty-day period should run from the date of receipt is the case of Plocher v. Commissioner of Public Safety, 681 N.W. 2d 698 (Minn. App. 2004), in which a Minnesota resident's procedural due process rights were violated following revocation of his driver's license because the notice mailed to the resident was unclear as to the beginning of the appeal period. The differences between these two cases are patently clear. First of all, the Plocher court, as with the Maryland Court of Appeals below, was reviewing a state law that had no application outside the state. The Plocher decision has no precedential effect on the Maryland courts. Second, the petitioner in Plocher actually raised the due process argument below, which Petitioner did not do in this case. Thus, the Plocher decision has absolutely no bearing on this matter and should be disregarded.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondents respectfully request that the Petition be denied.

Respectfully submitted,

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